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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/008,727	11/08/2001	Jeffrey A. Welton	THE 0243 PUS	6142

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BSH HOME APPLIANCES CORPORATION
INTELLECTUAL PROPERTY DEPARTMENT
100 BOSCH BOULEVARD
NEW BERN, NC 28562

EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
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3749

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/008,727

Applicant(s)

WELTON ET AL.

Examiner

CARL D. PRICE

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/04/2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on **12/04/2006** has been entered.

Claims

Claims 1-7 and 10-12 are pending.

Claims 8-9 and 13-14 have been canceled.

Response to Arguments

Applicant's arguments with respect to claims **1-7** and **10-12** have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims to be of a scope not previously considered. Consistent with applicant's argument that the prior art relied on in the previous office action fail to show, disclose and/or teach certain aspects of applicant's invention now recited in the claims filed on **12/04/2007**, applicant has amended the claims to include the following:

(Claim 1)

"... when the base is mounted in a fixed position with respect to a cooking surface of the countertop, wherein fluid leakage between said base and an interior of the cooktop is substantially foreclosed."

(Highlighting and Underlining Added)

The applicant traverses the rejection of claims 1-6, under 35 USC 103(a) as being obvious over Martin 838 in view of Haynes 754 or JP 59-52113, and argues the primary of Martin fails to disclose the structure of the present invention giving rise to the sealing

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arrangement between the base and the interior of the cooktop. Applicant further argues, but without analysis of the prior art, that neither of the secondary references cures this deficiency.

The applicant traverses the rejection of claims claim 7, 10, 11, and 12, under 35 USC 103(a) as being obvious in light of Martin 838 over Graves 230, and argues that neither reference discloses or suggests the claimed indexer and the sealing arrangement.

Applicant's comments with respect to the "the sealing arrangement" between the base and the interior of the cooktop are not commensurate with the scope of the claimed invention. On the contrary the claims merely recite "wherein fluid leakage between said base and an interior of the cooktop is substantially foreclosed". That is, the claims do not recite or define a per se "sealing arrangement".

At least the prior art reference of **US006318993 (Huang)** is now relied on to address the scope of the invention now relied on to address the scope of the invention now present in the claims. See below.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-7 and 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. These claims are vague and indefinite. For example:

- In claim 1, line 8 and 15-16, respectively, there is no proper antecedent basis for "the counter top", "the peripheral wall of each one of said plurality of fingers", and "said plurality of fingers" (both the base and burner head have "a plurality of fingers").

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are:

Positively recited structure necessarily associated and/or cooperating with the mounting of the base in a fixed position with respect to a cooktop surface which would

resulting in “wherein fluid leakage between said base and an interior of the cooktop is substantially foreclosed”. Indeed, due to the lack of positively recited structure defining the claimed invention, it is unclear at what location or with respect to which of the claimed elements “fluid leakage between said base and an interior of the cooktop is substantially foreclosed”. Stated differently, it is unclear how structure such as “each of said fingers extending outwardly relative to said open with each said finger having an interior that is not in communication with said opening” in itself necessarily results in fluid leakage between said base and an interior of the cooktop being substantially foreclosed. Does applicant intend the base to be claimed as, for example:

- - a generally planar structure having a top surface and bottom surface, the base includes a central opening defining a passage between the top and bottom surfaces and wherein the central opening of the base is sealed to and in fluid communication with a fuel gas mixture supply passage, wherein the base has a plurality of raised elongated finger formations extending upward from the top surface of the base, wherein each of the raised elongated finger formations define an interior open space defining an elongated opening along the length of each of the elongated finger formations on the bottom surface of the generally planar base, and wherein each of the elongated finger formations extend in a direction radially outward from the central opening and the interior open space and elongated opening do not communicate with the passage defined by the central opening of the base, whereby when the base is mounted on a cooking surface of a cooktop and the central opening of the base is aligned with an cooking surface opening through which the fuel gas mixture supply passage extends from an interior space location within the cooktop and located below the cooking surface, generally planar structure sized to extend radially outward of the cooking surface opening, whereby fluid leakage through the cooking surface opening and the interior space of the cooktop is substantially foreclosed by said base. - -

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the

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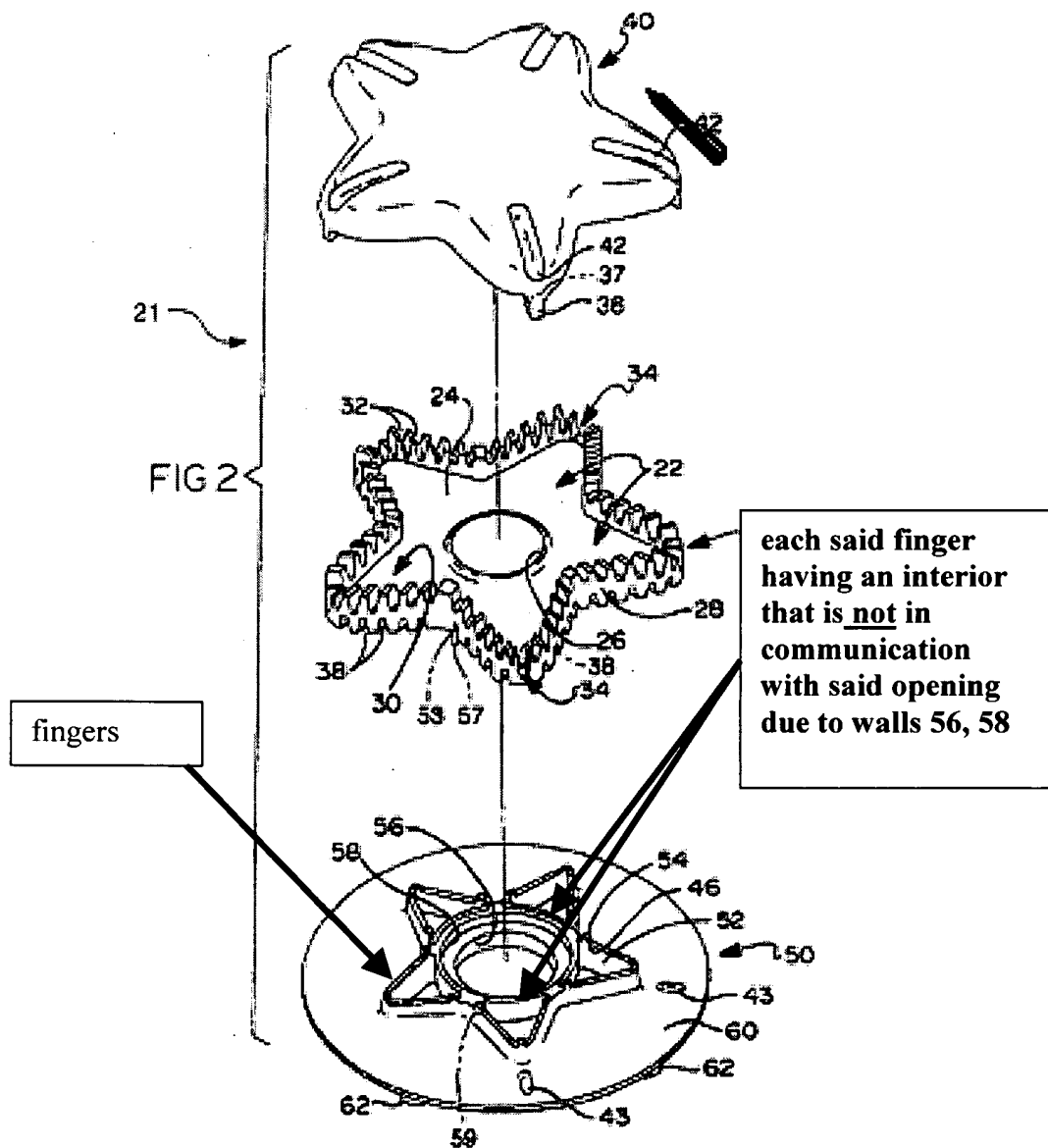
obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims Rejected under 35 U.S.C. 103(a)

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over **US006318993 (Huang)** in view of **US006371754 (Haynes) (of record)** or **JP 59-52113(of record)**.

US006318993 (Huang) shows and discloses a burner with a plurality of fingers (52) including comprising:

- a burner head (40);
- a base (50) supporting said plurality of fingers (52) around an opening (56) through which gas flows from a fuel source to said burner head;
- each of said fingers (52) extending outwardly relative to said opening and with each said finger having an interior that is not in communication with said opening due to upstanding wall (54);
- wherein when said base is mounted in a fixed position with respect to a cooktop surface of the counter top fluid leakage between said base and an interior of the cooktop is foreclosed;
- burner head fingers (22) corresponding in number to said plurality of fingers (52) of said base and having a peripheral wall with a second plurality of a slot shaped ports (32) positioned continuously and substantially evenly spaced around each of said fingers formed in said burner head, and each of said ports formed as in an upper portion of said peripheral wall along both sides of the peripheral wall of each one of said plurality of fingers;
- said burner head being in communication with said opening of said base for the flow of gas from a fuel source and said burner head;
- a cap (40) having a plurality of overlapping fingers corresponding in number to said plurality of fingers and having a lip (not referenced; see figure 3) extending laterally beyond peripheral wall.



US006318993 (Huang) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- a plurality of flame vents including:

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- a recess formed in the cap;
- an expanded transfer area intermediate the ports.

US006371754 (Haynes) teaches, from the same stovetop burner field of endeavor as **WO 98/30838 (Martin et al.)** providing:

- a plurality of scalloped flame vents (22, 200) formed as a recess and connecting adjacent ports (32) along the peripheral wall of a burner for forming a pilot flame arrangement to aide in propagating a flame between burner ports during, for example, ignition.

JP 59-52113 teaches, from the same stovetop burner field of endeavor as **WO 98/30838 (Martin et al.)** providing:

- a plurality of scalloped flame vents (52, 53, 54) formed as a recess and connecting adjacent ports (51) along the peripheral wall of a burner for forming a pilot flame arrangement to aide in propagating a flame between burner ports during, for example, ignition.

In regard to claims 1-6, for the purpose of aiding propagation of flames between the ports of **US006318993 (Huang)**, it would have been obvious to a person having ordinary skill in the art to modify the recess lip of **US006318993 (Huang)** to include scalloped shaped plural flame vents connecting adjacent ports along the peripheral wall of a burner, in view of the teaching of **US006371754 (Haynes)** or **JP 59-52113(of record)**.

Claims Rejected under 35 U.S.C. 103(a)

Claims 7, 10, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over **US006318993 (Huang)** in view of **Graves (US 1196230) (of record)**.

US006318993 (Huang) shows and discloses the invention substantially as set forth in the claims with possible exception to:

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- an indexer carried by the collar and the stem limiting insertion of the stem to at least one predetermined alignment wherein the indexer aligns one upper member in the at least one predetermined alignment with the base and the indexer including a plurality of splines on the collar and the stem interlocking with one another in at least one predetermined alignment.

Graves (US001196230) teaches, from applicant's same stove type burner field of endeavor, a cook top burner comprising:

- a base (11, 13) for mounting the burner in a cooktop (1);
- at least one upper member defining at least part a plurality of ports on a plurality of fingers;
- a collar (12; figure 4) carried by the base and the collar including a plurality of splines (16a) around the periphery thereof;
- a stem (15) carried by the at least one upper member (20) and the stem including a plurality of splines (17) around the periphery thereof; and
- an indexer (16,16a,17) carried by the collar and the stem limiting insertion of the stem to at least one predetermined alignment, the indexer aligning the at least one upper member in the at least one predetermined alignment with the base, the indexer including the plurality of splines on the collar and the stem interlocking with one another in the at least one predetermined alignment.

In regard to claims **7, 10, 11 and 12**, for the purpose of providing different positions relative to the top of the stove, it would have been obvious to a person having ordinary skill in the art to provide **US006318993 (Huang)** with an indexer carried by a collar and a stem limiting insertion of the stem to at least one predetermined alignment wherein the indexer aligns one upper member in the at least one predetermined alignment with the base and the indexer including a plurality of splines on the collar and the stem interlocking with one another in at least one predetermined alignment, in view of the teaching of **Graves (US001196230)**. In regard to claims 10 and 12, Official Notice is taken that it is well known to provide stove burners with an ignition element aligned with one adjacent flame port to ensure ignition of a burner flame (see for example (28) in WO 98/30838 (Martin et al.)). Also in regard to claim 12, the burner cap of

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US006318993 (Huang) includes a support (36) for carrying said head on a head support (34) and defining a second indexer for aligning said head at a predetermined alignment with respect to said head support.

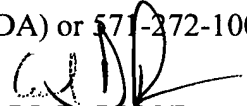
Conclusion

See the attached USPTO for, 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 6:30am-3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Rinehart can be reached on (571) 272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


CARL D. PRICE
Primary Examiner
Art Unit 3749

cp